

IN THE MATTER OF THE CHANGE OF NAMES OF SECAN KOK AND MARILYN SE, SECAN KOK, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

G.R. No. L-27621. August 30, 1973

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Appeal by the Republic of the Philippines from the order of the Court of First Instance of Cotabato dated September 3, 1966 reinstating the order dated March 30, 1966 granting the motion for supplemental judgment of petitioner-appellee and authorizing appellee's legal wife Lucia O. Tee and their minor children namely, Perfecto, Romeo, Betty, Tomas, Daniel and Antonio, Jr., to bear his newly granted surname Cuakok.

On May 18, 1964, appellee Secan Kok filed a petition to change his name and that of his daughter Marilyn Se respectively to Antonio Cuakok and Gloria Cuakok, although his petition mentions his other minor children, namely Perfecto, Romeo, Betty, Tomas, Daniel and Antonio, Jr. (p. 1, ROA) as having been born out of his marriage in the Catholic church on August 2, 1947 at Cotabato City, without, significantly, mentioning the name of his wife (pp. 1-4, ROA).

On November 7, 1964, the trial court, directed the amendment of the verification as it was insufficient (pp. 4-5, ROA).

On January 13, 1965, petitioner-appellee filed the amended petition with the corrected verification, but containing the same allegations and the same prayer (pp. 5-8, ROA).

Accordingly, on January 18, 1965, the Court ordered the publication of the amended petition (pp. 9-12, ROA).

On July 28, 1965, the trial court, after finding that:

"The evidence shows that the petitioner, Secan Kok, a prosperous businessman, is a Chinese citizen, born of Chinese parents in Amoy, China, on September 7, 1917. Sometime in 1928, the petitioner came to the Philippines, landed at the City of Manila and resided there for ten years. In 1938, the petitioner transferred to Cotabato, now Cotabato City, and has since then continuously resided therein. The petitioner is in possession of Alien Certificate of Registration No. A-62640, dated September 22, 1950, issued by the Commissioner of Immigration. He is also in possession of Certificate of Legalization of Residence, dated January 24, 1947.

"The evidence also shows that the petitioner's true and correct Chinese name is Cua Kian Cok, but by clerical mistake committed by the immigration official who prepared his registration papers, he is officially called Secan Kok. In 1947, the petitioner was converted to the Roman Catholic Church and was baptized in Cotabato City with the name of Antonio Cua. In that same year, the petitioner was married to his present wife, Lucia O. Tee, a Filipina. Presently, the petitioner has seven children, namely: Marilyn, Perfecto, Romeo, Betty, Tomas,

Daniel and Antonio, Jr., all of minor ages and all born and residents of Cotabato City.

"The petitioner has thus presently acquired three distinct names: Cua Kian Kok, Secan Kok, and Antonio Cua. He has consistently used Secan Kok as registered in the Bureau of Immigration in his official and business dealings. But his family and friends have also made use of his Christian names, Antonio Cua. In fact, his youngest son has been baptized as Antonio Cua, Jr.. This situation has caused confusion and embarrassment to the petitioner so that he has taken this legal step to change his registered name, and adopt his Christian baptismal name of Antonio Cuakok.

"Petitioner's daughter, Marilyn, 17 years old, is now enrolled in the Notre Dame College at Cotabato City. Since her childhood, she has been called 'Gloria', not by her baptismal name 'Marilyn'. In official and school records, she has been known as 'Maria Gloria Cua' Therefore, to avoid this confusion, petitioner desires to change the name of (his) daughter, Marilyn, to 'Gloria Cuakok' for all legal intents and purposes.

"Petitioner has filed this petition in good faith. Asst. City Fiscal Guialuzon Ibad submitted the case without presenting any evidence against the petition.

"Finding the petition meritorious, the Court hereby grants the name as prayed for. The name of the petitioner, Secan Kok, is hereby changed to Antonio Cuakok. Petitioner's daughter's name, Marilyn, is hereby changed to Gloria Cuakok." (pp. 14-16, ROA).

On January 7, 1966, petitioner-appellee filed a motion for supplemental judgment, alleging that the Bureau of Immigration refused to change the surname of his wife Lucia O. Tee and their aforesaid six (6) minor children to Cuakok, who were then registered in the Bureau of Immigration with the surname Cua (pp. 16-19, ROA).

On January 10, 1966, the government, thru the Assistant City Fiscal, opposed the motion on the ground that (a) the order dated July 28, 1965 of the trial court authorizing the change of his name from Secan Kok to Antonio Cuakok and the name of his daughter from Marilyn Se to Gloria Cuakok, has long become final and therefore can no longer be supplemented; and (b) that his wife Lucia O. Tee, being of age, should file a separate petition to change her name, such a petition being an individual and personal matter and not a collective one (pp. 20-22, ROA).

On February 4, 1966, petitioner-appellee replied to the said opposition contending that legitimate children shall principally use the surname of their father (Article 264, Civil Code of the Philippines) and that the wife has the right to use the surname of her husband (Article 370, Civil Code; pp. 22-26, ROA).

On February 28, 1966, the court set the hearing of the motion for the reception of evidence on the full identity of appellee's wife and six (6) minor children (pp. 26-27, ROA).

On March 24, 1966, the government filed a motion for the reconsideration of the aforesaid order of February 28, 1966 (pp. 27-29, ROA).

In an order dated March 30, 1966, the court granted the motion for supplemental judgment after finding that:

"The evidence shown that Lucia Tee Kok is the legitimate wife of the petitioner, with Alien Certificate of

Registration No. A 62605. The children of the petitioner, all born and residing in the City of Cotabato are:

- "1. Gloria, 17, ACR No. B46434.
2. Perfecto, 15, ACR No. B 105775.
3. Romeo, 11, ACR No. A 252184.
4. Betty, 7, ACR No. B 23005.
5. Tomas (twin of Daniel), 5, ACR No. B 46417.
6. Daniel (twin of Tomas), 5, ACR No. B 46416.
7. Antonio, Jr., 3, ACRNo. B 70913

"All these children were baptized in the Roman Catholic Church of Cotabato City, bearing the old surname of the petitioner — Cua. Now, Lucia Tee Kok desires to follow the new surname of her husband — Cuakok. The children — Perfecto, Romeo, Betty, Tomas, Daniel and Antonio, Jr., also desire to adopt the new surname of their father, pursuant to law." (pp. 31-32, ROA).

On May 3, 1966, the government filed a motion for the reconsideration of the aforesaid order of March 30, 1966 (pp. 33-37, ROA), which was granted on May 12, 1966 by the trial court on the ground that the judgment had long become final and was already executory when the present motion for supplemental judgment was filed and that the said motion amounted to the re-opening of the main petition in accordance with Rules 37 and 38 of the Revised Rules of Court, and forthwith set aside its order dated February 28, 1966, without prejudice to petitioner's right to file a new and separate petition for the purpose (p. 38, ROA).

However, upon motion for reconsideration by petitioner-appellee on August 27, 1966 (pp. 39-44, ROA), despite the opposition thereto by the government filed on September 1, 1966 (pp. 45-47, ROA), the trial court in its order dated September 3, 1966 set aside its order dated May 12, 1966 and reinstated its previous order dated March 30, 1966 (pp. 47-49, ROA), from which the State appealed.

The appeal should be sustained.

The rules are very explicit. Section 2 of Rule 103 of the Revised Rules of Court provides that a petition for a change of name shall be signed and verified by the person desiring his name to be changed, or some other person in his behalf. There is need therefore for a separate petition to be filed by the wife Lucia O. Tee, who is already of age, in her own behalf and in behalf of her minor children.

Then again, to confer jurisdiction on the court, since petitions for change of name are proceedings in rem, strict compliance with the requirements is essential, namely, that such verified petition should be published for three (3) successive weeks in some newspapers of general circulation in the province; and that both the title or caption of the petition and its body shall recite (1) the name or names or aliases of the applicant; (2) the cause for which the change of name is sought; and (3) the new name asked for. The reason for these requirements is that a change of name is a matter of public interest. The petitioner might be in the rogues' gallery or hiding to avoid service of sentence or compliance with a judgment in a criminal case, or could have escaped from prison; or if an alien, he might have given cause for deportation or might be one against whom an order of deportation was issued or that the new name the petitioner desires to adopt may be similar to that of a respectable person and the latter might have evidence that petitioner is of unsavory reputation that might impair his own good name. Being a privilege and not a right, a change of name lies within the discretion of the court to give or withhold. Failure to comply with

these jurisdictional requirements, renders the proceedings a nullity.[1]

To allow the change of name of the wife and other minor children of petitioner-appellee, upon a mere motion as an incident in the proceedings for the change of name of petitioner-appellee, will not only deprive the government of the required filing fees therefor but will also dispense with the aforesaid essential requirements respecting the recitals in the title of the petition and the publication to apprise persons, who may be in possession of adverse information or evidence against the grant of the petition, so that they will come forward with such information or evidence in order to protect public interest as well as the interest of private individuals who may be prejudiced by the change of name of the petitioner.

As reiterated in the aforesaid cases, all the names or aliases of petitioner must appear in the title or caption of the petition; because the reader usually merely glances at the title of the petition and may only proceed to read the entire petition if the title is of interest to him. Moreover, the petition and the order directing its publication are usually found in the inside or back pages of a newspaper, which escape the notice of the reader who merely glances at the title of the petition and does not notice the other names and/or aliases of the applicant if these are mentioned only in the body of the petition or order.

Since there is a total absence of a petition signed by Lucia O. Tee and her other minor children and the publication thereof, the challenged orders dated March 30, 1966 and September 3, 1966 are completely void ab initio.

Inasmuch as petitioner-appellee's own petition and the publication of the same do not include all his names and aliases, the new name he desires to bear as well as those of his minor daughter Marilyn Se, the trial court likewise acquired no jurisdiction over his petition and the decision granting his petition is similarly void ab initio and could be attacked collaterally, vitiated as it was by a fatal flaw — lack of jurisdiction.

IN VIEW HEREOF, THE QUESTIONED ORDERS DATED SEPTEMBER 3, 1966 AND MARCH 30, 1966 OF THE TRIAL COURT, AS WELL AS THE JUDGMENT DATED JULY 28, 1965 ARE HEREBY SET ASIDE AS NULL AND VOID; AND THIS CASE IS HEREBY REMANDED TO THE TRIAL COURT WHICH SHALL DIRECT PETITIONER-APPELLEE TO FILE AN AMENDED PETITION THAT SHOULD BE PUBLISHED AS HEREINABOVE INDICATED. WITH COSTS AGAINST PETITIONER-APPELLEE.

Makalintal, Acting. C.J., Zaldivar, Ruiz Castro, Fernando, and Esguerra, JJ., concur.

Teehankee, Barredo and Antonio, JJ., took no part.

[1] Go Chiu Beng vs. Republic, Aug. 18, 1972, 46 SCRA 617, 619-620; In re Change of Name of Hermogenes Diangkinay, Republic vs. Reyes, et al., June 30, 1972, 45 SCRA 570, 573-576; Republic vs. Tañada, Nov. 29, 1971, 42 SCRA 419, 423-424; In re Change of Name of Ma Chik Kin, etc., Ma Chik Kin vs. Republic, July 28, 1970, 34 SCRA 4, 6-8.

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